Petition

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81-2141

NO.

IN THE

SUPREME COURT OF THE UNITED STATES
October Term, 1981

ROBERT J. KONDRAT,

Petitioner,

v.

THE UNITED STATES STATE DEPARTMENT,

Respondent.

PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

ROBERT J. KONDRAT
29121 Chardon Road
Willoughby Hills, Ohio 44092
(216) 944 0140

Petitioner

QUESTIONS PRESENTED FOR REVIEW

I. Can the United Nations Universal Declaration of Human Rights and Fundamental Freedoms be cited as a legal basis for a Complaint under the framework of the United States Constitution?

II. Was due process of law under the Fourteenth Amendment deprived when the lower court could not produce the public records of the case, and as a result of the court's inability to do so, the Petitioner was prevented from being fully informed and not able to plead, and which was cause for an unfavorable decision against Petitioner?

LIST OF PARTIES INVOLVED

Pursuant to the Rules of this Court the following were parties in the court whose judgment is sought to be reviewed:

ROBERT J. KONDRAT

Petitioner

THE UNITED STATES STATE DEPARTMENT

Cyrus R. Vance

Ms. P. Derian

Respondents

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OPINIONS BELOW

The United States District Court, Northern District, Eastern Division, in Case No. C80 299 on October 15, 1980 dismissed Petitioner's Complaint for the reason that Petitioner failed to set forth any legal basis for his claim. A copy of that opinion is attached in Petitioner's appendix.

The United States Court of Appeals for the Sixth Circuit, in Case No. 80-3718 on March 18, 1982 affirmed the District court's order of October 15, 1980. A copy of that opinion is attached in Petitioner's appendix.

JURISDICTIONAL STATEMENT

The date of the decrees sought to be reviewed are the District Court's October 15, 1980 Order and the Circuit Court's March 18, 1982 Order. The statutory provision conferred on this court to review the decree in question by writ of certiorari, is Article III of the United States Constitution, which created the Supreme Court as a constitutional court, giving judicial power to all cases, in law and equity, that arises under the U.S. Constitution.

CONSTITUTIONAL PROVISIONS

The constitutional provisions which the case involves are: a) Article II, Section 2 which gives the U.S. President, with the consent and advice of the Senate, the power to make treaties; and b) The Fourteenth Amendment which provides for due process of law.

STATEMENT OF THE CASE

Petitioner filed a Complaint in the U.S. District Court alleging deprival of the United Nations Universal Declaration of Human Rights and Fundamental Freedoms as per Articles 1,2,5,7,9,10,11(2) and 12. Respondents filed a Motion to Dismiss on the basis that the court lacked jurisdiction and that the Complaint failed to state a claim upon which relief can be granted. The copy of Respondent's Motion served on the Petitioner was not complete. Page No. 7 of the Motion was missing. Petitioner sought the missing page at the U.S. District Court. The court could not find or produce the case file so that Petitioner could obtain a copy of the missing page. Failure of the court to produce the case file so that the contents of the Respondent's Motion could be fully known prevented the Petitioner from opposing the Respondent's Motion to Dismiss. The District Court then rendered a decision in favor of the Respondents on the opinion that Petitioner did not oppose Respondent's Motion and that Petitioner failed to set forth a legal basis for claim.

Petitioner appealed the decision to the Sixth Circuit Court of Appeals citing the Fourteenth Amendment to the United States Constitution which provides for due process of law. The Petitioner's appeal was based on the issue that the District court did not have the case file so that the contents of Respondent's Motion could be made known to Petitioner. Failure of the District court to provide the Petitioner the needed information denied the Petitioner due process of law by not being able to oppose the Respondent's Motion. The Appellate Court then rendered a decision affirming the District's Court's Order and added that the issue was frivolous.

ARGUMENT

The United States District Court in its decision has held that the Petitioner had failed to set forth any legal basis for his claim. The Petitioner argues that the United Nations Universal Declaration of Human Rights and Fundamental Freedoms is a legal basis for complaint under the framework of the U.S. Constitution. Article II, Section 2 of the U.S. Con-

stitution gives the United States President the power, with the consent and advice of the Senate, to make treaties. A treaty is a compact between two or more nations with a view to the public welfare. The United States is a member of the United Nations and subscribes to the principles of human rights as proclaimed by the General Assembly of that body.

In general, Articles land 2 of the Universal Declaration of Human Rights state that all human beings are born free and equal in dignity and rights and are entitled to all the rights and freedoms set forth in the Declaration, without distinction of any kind, such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Articles 3 through 21 recognize the civil and political rights for all.

The General Assembly of the United Nations proclaimed the Universal Declaration of Human Rights as a common standard of achievement for all peoples and all nations, and called upon all member states and all peoples to promote and secure the effective

recognition and observance of the rights and freedoms set forth therein.

As to question No. II, the Petitioner argues that if the courts are to serve justice, they are required to keep and maintain a case file so that information, when requested, can be readibly obtained. The lower court which could not produce the Petitioner's missing information denied Petitioner due process of law because Petitioner was unable to plead to the Respondent's Motion. Subsequently, the court's decision was unfavorable to Petitioner partly because the Respondent's Motion in the District court was not opposed.

The Appellate Court labeled the appeal issue as frivolous. Mismangement in and by the court cannot be considered trivial, worthless or of little importance when the court's mismanagement has a direct bearing on the verdict rendered. The Petitioner could not oppose the Respondent's Motion because of incomplete information. The District court could not provide the missing information. And the verdict rendered by the District court was partially based on the inability of the Petitioner to respond to

the Respondent's Motion.

Although the appeal was based on the mismanagement in the District court, the Appellate court saw fit to affirm the District court's decision because the issue of the appeal was found to be frivolous. If the Petitioner's issue was not worthy of appeal, then what is to prevent any court from influencing any decision, at any time, by merely not having in its possession the case vitals.

CONCLUSION

For the above reasons Petitioner prays that the writ be granted.

Respectfully Submitted,

ROBERT J. KONDRAT
29121 Chardon Road
Willoughby Hills, OH 44092
(216) 944 0140
Petitioner.

Appendix

IN THE

SUPREME COURT OF THE UNITED STATES
October Term, 1981

ROBERT J. KONDRAT,

Petitioner,

v.

THE UNITED STATES STATE DEPARTMENT

Respondent

APPENDIX A

NO. 80-3718

UNITED STATES COURT OF APPEALS

FOR THE SIXTH CIRCUIT

ROBERT J. KONDRAT

Plaintiff-Appellant

v. ORDER

CYRUS VANCE, UNITED STATES STATE DEPARTMENT; MS. P. DERIAN, SECRETARY OF HUMAN RIGHTS, UNITED STATES STATE DEPARTMENT

Defendants-Appellees

BEFORE: LIVELY and JONES, Circuit Judge; and CELEBREZZE, Senior Circuit Judge.

This appeal has been referred to a panel of the court pursuant to Rule 9(a), Rules of the Sixth Circuit. After examination of the record and briefs, this panel agrees unanimously that oral argument is not needed. Rule 34(a), Federal Rules of Appellate Procedure.

On March 3, 1980, plaintiff filed his complaint in the district court. Plaintiff alleges the defendants did not comply with the United Nations Declarations on Human Rights because the defendants

failed to investigate an alleged violation of plaintiff's rights. Having carefully examined the district court record, and the briefs of both parties, this court finds no error in the district court's conclusion that plaintiff's complaint failed to state a claim for which relief could be granted. The only issue raised in plaintiff's brief on appeal is frivolous.

The judgment of the district court (order of October 15, 1980) dismissing the complaint is affirmed. Rule 9(d)(2) Rules of the Sixth Circuit.

ENTERED BY ORDER OF THE COURT

_____
Clerk

Signed by John P. Hehman

Time-Stamped March 18, 1982

WHITE, J.

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF OHIO

EASTERN DIVISION

ROBERT J. KONDRAT,	)	
	)	
Plaintiff	)	
	)	
v.	)	ORDER
	)	
EDMUND S. MUSKIE, et al,	)	C80-299
	)	
Defendants	)	

Upon the Court's Memorandum Opinion and Order filed October 9, 1980,

IT IS ORDERED that Plaintiff's complaint is hereby dismissed at plaintiff's costs.

George W. White
United States District Judge

Signed by George W. White
Time-stamped October 15, 1980

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF OHIO

EASTERN DIVISION

ROBERT J. KONDRAT	)	
	)	C80 - 299
Plaintiff	)	
	)	
vs.	)	
	)	
CYRUS R. VANCE, et al,	)	MEMORANDUM OPINION
	)	AND ORDER
Defendant	)	

Plaintiff files this complaint for redress of grievances. He alleges that the Government fabricated criminal activity against him, had him arrested, imprisoned and made to stand trial in violation of the United Nations Universal Declaration of Human Rights. (State of Ohio v. Robert J. Kondrat, case #76 C.R. 473). He further alleges that defendants did not promote and encourage respect for human rights and fundamental freedoms. Plaintiff went to Washington, D.C. and presented his grievances alleging denial of human rights. He asserts that the defendants refused to investigate and take corrective

measures to ensure that his rights were provided for as proclaimed by the United Nation's Charter. Plaintiff asks the Court to require defendant to investigate his grievances, to remedy the injustices, and ensure that fundamental freedoms are not denied. He further requests that defendants be enjoined from promoting and imposing the human rights doctrines on other nations until such time as defendants have established and practiced these fundamental freedoms in their own country.

The defendants have filed a motion to dismiss pursuant to Rules, 8,12, (b),(1),(2) (4) and (6) of the Federal Rules of Civil Procedure. Plaintiff has not opposed this motion.

Rule 8 (a) requires that a pleading set forth a statement of the grounds upon which jurisdiction depends and that it contain a short and plain statement of the claim showing that the pleader is entitled to relief. Plaintiff has failed to comply with this Rule. A statement by Plaintiff that he feels aggrieved is insufficient to comply with the Federal Rule that a pleading contain a short and

plain statement of the claim showing that the pleader is entitled to relief. The pleading must give the defendant fair notice and state elements of a claim. Black v. Board of Education of Education of Amityville, New York, 31 F.R.D. 44.

When allegations of a complaint clearly demonstrate that Plaintiff does not have a claim, the case should be dismissed. Tenopir v. State Farm Mutual Insurance Company, 403 F2 533, Garland v. City of St. Louis, 596 F2 784, Richardson v. Pennsylvania Department of Health 561 F2 489. The pleadings should be construed in favor of a layman, but when it appears that Plaintiff cannot support his claim by an set of facts, the complaint should be dismissed. Conley v. Gibson, 355 U.S., 41.

Whatever happened to Plaintiff occured in the state court. The State Department took no part nor did it have an obligation to intervene in the state proceedings. Any redress for deprivation of rights must involve the perpetrators of the wrongdoing. Any injury to Plaintiff must be a consequence of the defendant's action or the prospective relief sought

must remedy the alleged harm. Warth v. Seldin, 422 U.S. 490, American Jewish Congress v. Vance, 575 F2 939.

Apparently the Plaintiff contends that he was deprived of fundamental rights by the State of Ohio, but brings this action against the State Department for not investigating his claim and requests the Court to require the State Department to stop promoting and imposing human rights on other nations until they have established human rights in this country.

Plaintiff seems to be seeking a court order directing an agency of the United States to conduct foreign policy in a manner satisfactory to Plaintiffs. This is not a ministerial duty subject to judicial direction. Zemel v. Rusk, 381 U.S. 1.

This appears to be in the nature of a mandamus action under 28 U.S.C. S 1361:

> "Before such a writ may issue it must appear that the claim is clear and certain, and the duty of the officer involved must be ministerial, plainly defined, and preemptory."

Plaintiff has failed to set forth any legal basis for his claim. He cannot state a cause of action

against defendant under any set of facts, Conley v. Gibson, Supra.

Accordingly, defendant's motion to dismiss pursuant to Rules 8, and 12, (b) 1 and 6 is granted. Case dismissed.

IT IS SO ORDERED.

George W. White
UNITED STATES DISTRICT JUDGE

Signed by George W. White

Time-Stamped October 15, 1980